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Propo.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(101)
12/3/02
up

JACK MARRONE, husband, KAREN
MARRONE, wife, both individually and
in their capacity as parents and guardians
for VIDA MARRONE, a minor, and
MATTHEW ADAM MARRONE,

Plaintiffs

vs.

ALLSTATE INSURANCE COMPANY,
LINDA M. EDLEMAN, FRED SCHAFER,
MT. GRETN A REALTY, and HOUSE
MASTERS

Civil Action No.: 1:CV-01-0773

(U.S. District Judge Yvette Kane)

JURY TRIAL DEMANDED

FILED
HARRISBURG, PA

DEC 02 2002

MARY E. D'ANDREA, CLERK
9/18
2002

**MOTION TO PERMIT THE FILING OF PLAINTIFFS' MEDICAL CAUSATION
EXPERT REPORTS *NUNC PRO TUNC***

AND Now come the Plaintiffs, by and through their counsel of record, Tarasi, Tarasi & Fishman, P.C., Louis M. Tarasi, Jr., Esquire, and Gianni Floro, Esquire, and hereby file this Motion to Permit the Filing of Plaintiffs' Medical Causation Expert Reports *Nunc Pro Tunc*, and in support thereof says the following:

1. On July 3, 2002, the Honorable Yvette Kane entered an Order, after a status conference with the parties in this matter. The date set for the Report of Experts was September 13, 2002.
2. Attached as exhibits 1-4 are the Plaintiffs' medical causation expert reports received by the undersigned on October 31, 2002.
3. The Plaintiffs' medical causation expert was unable to generate his expert reports by September 13, 2002, due to the doctor's busy schedule; unbeknownst to the Plaintiffs their

medical causation expert was traveling in Poland, Germany, Texas and California for two months from the middle of August to the middle of October in association with his practice. Fact Discovery in this matter ended on August 30, 2002.

4. The Plaintiffs respectfully request that the Court Order enter an Order allowing the Plaintiffs to disclose to the Defendants their medical causation expert reports in this matter *nunc pro tunc*.

5. Counsel for the Defendants do not concur in the presentment of a motion for an extension of time to file the attached reports. (L.R. 7.1)

6. The Defendants will not be prejudiced by the filing of the Plaintiffs' medical causation expert reports *nunc pro tunc* since the time for trial in this matter has yet to occur and they will further not be surprised or delayed since the Plaintiffs had previously permitted the Defendants the opportunity to conduct medical examinations of the Plaintiffs and generate their own medical causation expert report in the matter. Trial in this matter is set for February 3, 2002, and the Defendants will have sufficient time to prepare for trial without prejudice. Pursuant to LR 16.5 this District Court has the authority to make special pre-trial orders governing this action, and it well settled that is within a District Court's sound discretion to expand the time for filing such expert reports as are attached hereto and as necessary in the interests of justice. Buffington v. Wood, 351 F.2d 292 (3rd Cir. 1964). The Plaintiffs in the case *sub judice* had permitted these Defendants to have their expert, Dr. Holland, examine them, and so no surprise or prejudice can be alleged by these Defendants if this motion is granted.

7. The Plaintiffs therefore request that an Order be entered permitting them to file their medical causation expert reports *nunc pro tunc*.

Wherefore, the Plaintiffs respectfully request that this District Court enter an Order permitting them to file their medical causation expert reports, attached as exhibits 1-4, *nunc pro tunc*.

Respectfully submitted,

TARASI, TARASI & FISHMAN, P.C.

By: 

Gianni Floro, Esquire

PA ID No. 85837

Attorney for the Plaintiffs

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Pittsburgh, PA 15219

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EXHIBIT 1

Eckardt Johanning, M.D., M.Sc.
Occupational and Environmental Life Science -
Fungal Research Group, Inc. (FRG)

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www.fungalresearchgroup.com

Offices:
Albany,
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Frankfurt/Main, FRG

October 21, 2002

RE: Jack P. Marrone
11673 Highway PT
Dixon, MO 65459
Date of Birth 2/22/46

I reviewed again the visit of Jack Marrone from January 17, 2002. This is a summary of the findings. I reviewed all provided outside medical reports and environmental findings, including the Advanced Applied Science report from October, 15, 2000.

Mr. Marrone, age 55, is a VA vet, with 100% disability since 1993 secondary to a gunshot wound, posttraumatic stress syndrome, and chloracne problems. He reported that after moving into and after doing some clean-up work inside the house on 354 Timber Rd, Mount Gretna, Pa, he developed a variety of problems including shortness of breath, eye irritation, chest tightness, wheezing, coughing, excessive fatigue, and nasal problems. He has been sneezing as well. He also developed an increased sensitivity and intolerance to gases, fumes, and a variety of air contaminants. He reports that his chloracne problem had been getting worse, and that he generally would look different. He reported that the special acne soap has not been helpful for him as in the past. He reported that he had not been seen at the time by his VA doctor and he had no special breathing test or chest x-ray test done. He left his home secondary to health concerns and findings of mold and moisture problems in his previous house. Since leaving this house, he felt much better. He stated that his breathing and fatigue had improved. He has less headaches.

Medications:

Trazodone.

Past Medical History:

Benign prostrate hypertrophy, exposure to Agent Orange resulting in chloracne development, posttraumatic stress syndrome, and gunshot wound. He had episodes of stomach cramps in the past. He denied any other significant abnormalities.

Past Surgical History:

Jack P. Marrone

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Scrotal cyst surgery in 1976.

Social History:

He is a smoker starting at age 16, 1-1½ pack per day. He denied any alcohol or significant drug history.

He reported that he now has been living in Missouri, and that he feels much better there. In his current home there are no known environmental problems.

Physical Examination:

Blood pressure: 120/90 mmHg. Respiratory rate 12/min. Temperature 97 T. Height: 5'9". Weight: 201 pounds. His peak flow was found at 440.

Examination of head, ears, nose, throat, chest, abdomen, lungs, and extremities was overall unremarkable. The nasal passage showed increased erythema and were narrow.

Laboratory Tests:

On laboratory examination, he showed no reaction to specific IgE allergens; however, he had a marked reaction indicating significant organic dust exposure including to a variety of tested fungi, i.e., *Micropolyspora faeni*, *Aspergillus fumigatus*, *Aureobasidium pullulans*, *Penicillium notatum*, and *Trichoderma viride*. He also had elevated IgG and IgA response to *Stachybotrys chartarum*. These tests are used as exposure markers and do not necessarily correspond with disease activity.

Pulmonary function test from September 12, 2002 showed that he had overall normal lung function. Chest x-ray was negative.

Immunological test which included IgG subclasses and lymphocyte enumeration test and function test showed a slightly lower than normal absolute CD3 or matured T-lymphocyte cell count with 1462, normal 1507-1953. The remainder of the testing was normal. These findings are non-specific, but typical after intense fungal exposure.

I reviewed medical records provided to me by various providers. These records did not produce any additional information. He has been diagnosed in the past with prostatitis, hemorrhoids, stable COPD, and prostatitis problems.

The environmental investigation and report by Mr. R. Pfromm indicated the presence of moisture related fungi and defects inside the house, in particular in the basement. Fungi included species of *Aspergillus*, *Penicillium* and *Stachybotrys*, that were higher inside the house than outside (control). Photos were also provided confirming visible contamination.

Jack P. Marrone

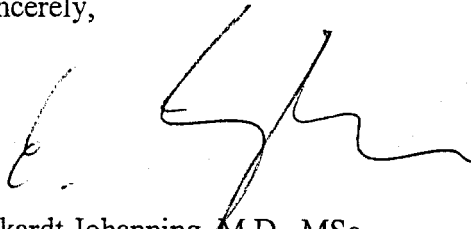
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October 21, 2002

Conclusion:

Based on recent findings, I conclude that Mr. Marrone had a respiratory reaction after intense exposure to mold and mildew in his home, which was probably also aggravated by doing some repair and clean-up work in the moldy house. He has been diagnosed in addition to his previous medical conditions with upper and lower airway inflammation and irritation effects (Rhinosinusitis, bronchitis) and mold allergy. With a reasonable degree of medical certainty I believe this was the result of the exposure in the described contaminated house. He has been advised that in the future he should avoid any of these problems since he has clearly been sensitized. Provided that he has no further exposure to the fungi, he should be reasonably well.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Johanning', with a stylized flourish extending to the right.

Eckardt Johanning, M.D., MSc.
Diplomate of American Board of Preventive Medicine
(Occupational and Environmental Medicine)
Diplomate of American Board of Family Medicine

EXHIBIT 2

Eckardt Johanning, M.D., M.Sc.

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New York City
Frankfurt/Main, FRG

October 21, 2002

RE: Karen A. Marrone
11673 Highway PT
Dixon, MO 65459

Date of Birth 12/22/56

I reviewed again the visit of Karen Marrone from January 17, 2002. She came accompanied by her husband and daughter Vida, who also were examined that day. This is a summary of the findings. I reviewed all provided outside medical reports and environmental findings, including the Advanced Applied Science report from October, 15, 2000.

Mrs. Marrone, age 45 years, has a known service related disability since 1976. She has been previously diagnosed with multiple sclerosis in 1977. She reported that after moving into the house on 354 Timber Rd, Mount Gretna, Pa, she developed a variety of problems including shortness of breath, chest tightness, coughing, excessive fatigue, and nasal problems, stomach cramps. She had been diagnosed by her VA physician Dr. DaCosta with sinusitis and bronchitis. She also consulted an ENT specialist who reportedly recommended surgery.

She and the rest of the family left this home October 14, 2001 secondary to health concerns and findings of mold and moisture problems in this house. Since leaving this house, she also felt much better.

Medications:

Albuterol, Ibuprofen, Baclofen, Clonazepam

Past Medical History:

Rubella 1972, MS 1977, PUD, reflux, esophagitis, rhinosinusitis since early 70s, PTSD in 80s. Allergy to penicillin.

Karen A. Marrone

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Past Surgical History:

Gallbladder surgery 5/2000, hernia repair, cyst removal, laparoscopy.

Social History:

She is a smoker starting at age 15, 1-2 packs per day. She denied any alcohol or significant drug history.

She reported that she now living with her family in Missouri, and that she feels much better there. In this current home there are no known environmental problems.

Physical Examination:

Blood pressure: 120/90 mmHg. Respiratory rate 12/min. Temperature 99.8 T. Height: 5'5". Weight: 131 pounds. Her peak flow was 400 ml. She was coughing during the exam.

Examination of head, ears, nose, throat, chest, abdomen, lungs, and extremities was overall unremarkable. She had problems with line walking and imbalance.

Laboratory Tests:

No reaction to specific IgE and IgG fungal allergens.

Pulmonary function test was not done. Chest x-ray was negative.

Immunological test which included IgG subclasses and lymphocyte enumeration test and function test showed a higher than normal CD4/CD8 ratio and B-lymphocyte cell counts/percentage. The remainder of the testing was normal. These findings are non-specific, but typical after intense fungal exposure.

I reviewed medical records provided to me by various providers. These records did not produce any additional information.

The environmental investigation and report by Mr. R. Pfromm indicated the presence of moisture related fungi and defects inside the house, in particular in the basement. Fungi included species of *Aspergillus*, *Penicillium* and *Stachybotrys*, that were higher inside the house than outside (control). Photos were also provided confirming visible contamination.

Conclusion:

Based on recent findings, I conclude that Mrs. Marrone had an respiratory reaction after intense exposure to mold and mildew in her previous home. She has been diagnosed in addition to her previous medical conditions with upper and lower airway inflammation and irritation effects (Rhinosinusitis, bronchitis). With a reasonable degree of medical

Karen A. Marrone

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certainly I believe these were the results of the exposure in the described contaminated house. She has been advised that in the future she should avoid any of these moldy indoor exposures and stop smoking. Provided that she has no further exposure to the fungi, she should be reasonably well related to this condition.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Johanning', with a stylized flourish at the end.

Eckardt Johanning, M.D., MSc.
Diplomate of American Board of Preventive Medicine
(Occupational and Environmental Medicine)
Diplomate of American Board of Family Medicine

EXHIBIT 3

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October 21, 2002

RE: Vida A. Marrone
11673 Highway PT
Dixon, MO 65459
Date of Birth 5/5/84

I reviewed again the visit of Ms. Vida A. Marrone from January 17, 2002. She came accompanied by her parents, who also were examined that day. This is a summary of the findings. I reviewed all provided outside medical reports and environmental findings, including the Advanced Applied Science report from October, 15, 2000.

Ms. Vida Marrone, age 17 years, is a student who works part time as a waitress. She reported that after moving into the house on 354 Timber Rd, Mount Gretna, Pa, she developed a variety of problems including coughing, sore throat, fatigue, skin irritation, headaches and nasal problems. Away from the house (such as her friends' houses) she generally would feel much better. She had been diagnosed by an emergency room doctor with sinusitis and bronchitis.

She left with her family the house on October 14, 2001 secondary to health concerns and findings of mold and moisture problems. Since leaving this house, she also felt much better.

Medications:

None.

Past Medical History:

MVA 2/01 related low back pain.

Past Surgical History:

None

Vida A. Marrone

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Social History:

She is a "very light" smoker (1-5 cigg./day). She denied any alcohol or significant drug history.

She reported that she is now living with her parents in Missouri, and that she feels much better there. In this current home there are no known environmental problems.

Physical Examination:

Blood pressure: 100/60 mmHg. Respiratory rate 12/min. Temperature 98 T. Height: 5'5". Weight: 138 pounds. Her peak flow was 550 ml.

Examination of head, ears, nose, throat, chest, abdomen, lungs, and extremities was overall unremarkable.

Laboratory Tests:

No reaction to specific IgE and IgG fungal allergens. There was a very minimal IgA elevation to *Stachybotrys* specific IgA.

Pulmonary function test and Chest x-ray were not done.

Immunological test which included IgG subclasses and lymphocyte enumeration test and function test showed a higher than normal T and B-lymphocyte cell counts/percentage. The remainder of the testing was normal. These findings are non-specific, but typical after intense fungal exposure and some immune reactivity. Follow up repeat evaluation have been recommended.

I reviewed medical records provided to me by various providers. These records did not produce any additional information.

The environmental investigation and report by Mr. R. Pfromm indicated the presence of moisture related fungi and defects inside the house, in particular in the basement. Fungi included species of *Aspergillus*, *Penicillium* and *Stachybotrys*, that were higher inside the house than outside (control). Photos were also provided confirming visible contamination.

Conclusion:

Based on recent findings, I conclude that Ms. Vida Marrone had also a typical acute respiratory reaction after intense exposure to mold and mildew in her previous home. She has been diagnosed with upper and lower acute airway inflammation and irritation effects (Rhinosinusitis, bronchitis). With a reasonable degree of medical certainty I believe these were the results of the exposure in the described contaminated house. She has been advised that in the future she should avoid any of these moldy indoor exposures and stop

Vida A. Marrone

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October 21, 2002

smoking. Provided that she has no further exposure to the fungi, she should be reasonably well related to this condition.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Johanning', with a stylized flourish at the end.

Eckardt Johanning, M.D., MSc.
Diplomate of American Board of Preventive Medicine
(Occupational and Environmental Medicine)
Diplomate of American Board of Family Medicine

EXHIBIT 4

Eckardt Johanning, M.D., M.Sc.

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October 21, 2002

RE: Matthew Marrone
11673 Highway PT
Dixon, MO 65459
Date of Birth 7/29/82

I reviewed again the visit of Matthew Marrone from January 17, 2002. This is a summary of the findings. I reviewed also the environmental findings, including the Advanced Applied Science report from October, 15, 2000.

Matthew Marrone, age 19, is a biology undergraduate student with no prior significant medical history. He reported that after moving into the house on 354 Timber Rd, Mount Gretna, Pa, in August of 1999 he developed shortness of breath, chest tightness, eye irritation, skin lesions under his axillae, excessive fatigue, nasal problems and significant memory loss. After leaving the house he had some improvement. At the time of the visit he was particularly bothered by joint pain in knees, memory problems and fatigue.

Medications:

None.

Past Medical History:

Benign. He denied any other significant abnormalities.

Past Surgical History:

Matthew Marrone

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Social History:

He denied any smoking, alcohol or drug abuse history.

Physical Examination:

Blood pressure: 110/70 mmHg. Respiratory rate 12/min. Temperature normal Height: 5'10". Weight: 163 pounds. His peak flow was found at 450ml.

Examination of head, ears, nose, throat, chest, abdomen, lungs, and extremities was overall unremarkable.

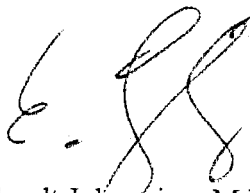
Environmental Exposure:

The environmental investigation and report by Mr. R. Pfromm indicated the presence of moisture related fungi and defects inside the house, in particular in the basement. Fungi included species of *Aspergillus*, *Penicillium* and *Stachybotrys*, that were higher inside the house than outside (control). Photos were also provided confirming visible contamination.

Conclusion:

Mr. Matthew Marrone had a variety of health complaints including respiratory reactions that are in time and place associated with exposure to mold and mildew in his previous home. He has been advised that in the future he should avoid any of these fungal indoor exposures and related problems. He has been discharged for care and follow up by his local physicians. Provided that he has no further exposure to the fungi, he should be reasonably well.

Sincerely,



Eckardt Johanning, M.D., MSc.
Diplomate of American Board of Preventive Medicine
(Occupational and Environmental Medicine)
Diplomate of American Board of Family Medicine

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACK MARRONE, husband, KAREN	:	
MARRONE, wife, both individually and	:	Civil Action No.: 1:CV-01-0773
in their capacity as parents and guardians	:	
for VIDA MARRONE, a minor, and	:	
MATTHEW ADAM MARRONE,	:	
	:	
Plaintiffs	:	
	:	
vs.	:	(U.S. District Judge Yvette Kane)
	:	
ALLSTATE INSURANCE COMPANY,	:	
LINDA M. EDLEMAN, FRED SCHAFER,	:	
MT. GRETNAL REALTY, and HOUSE	:	JURY TRIAL DEMANDED
MASTERS	:	

CERTIFICATE OF NON-CONCURRENCE

I, Gianni Floro, Esquire, counsel for the Plaintiffs state that on November 27, 2002, I have contacted counsel for Schaeffer and Mt. Gretna who does not concur; counsel for Housemaster, who was unavailable; counsel for Allstate who was unavailable; counsel for Edleman who was unavailable; with the Plaintiffs' "Motion File Plaintiffs' Medical Causation Expert Reports *Nunc Pro Tunc*." The undersigned further states that Plaintiffs' motion is so averse to Defendants' positions, pursuant to previous discussions with counsel for the Defendants, that those Defendants which were unavailable would not concur in this Motion to Permit the Filing of Plaintiffs' Medical Causation Expert Reports *Nunc Pro Tunc*.

Respectfully submitted,

TARASI, TARASI & FISHMAN, P.C.

By: _____

Gianni Floro, Esquire

PA ID No. 85837

Counsel for Plaintiffs